

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

YOMAYRA DELGADO-CARABALLO,

Plaintiff(s),

HOSPITAL PAVIA DE HATO REY, INC.,

Defendant(s).

Civil No. 14-1738 (DRD)

**ORDER**

Pending before the Court are the following motions: (a) *Motion to Dismiss Complaint under FRCP 12(b)(6)*, Docket No. 10, and (b) *Motion to Dismiss under FRCP 12(b)(2) and (5)*, Docket No. 5.

Defendant APS Healthcare Puerto Rico, Inc. (“APS”) moved the Court to dismiss the instant complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure (“Fed.R.Civ.P.”) on the grounds that there is no subject matter jurisdiction “insofar EMTALA does not provide federal jurisdiction,” there is no diversity jurisdiction, and the state law claims are time barred. *See* Docket No. 10. Defendant Dr. Nilda Iris Lopez Laureano (“Dr. Lopez”) moved to dismiss the instant complaint under Rule 12(b)(2) and (5) on the grounds of insufficient service of process, and the claims of the complaint are time barred. *See* Docket No. 32.

A Scheduling Conference was held on June 18, 2015, just three days after the last document relating the motion to dismiss filed by Dr. Lopez was filed, *see* Docket No. 42. At the Scheduling Conference the Court granted the parties until November 16, 2015 to complete the discovery with the exception of Dr. Lopez, and the expert’s reports are due on October 16, 2015. *See* Docket No. 44, *Minutes and Order* of June 18, 2015.

The Court scheduled several hearings dates after the parties have concluded the discovery

to address the issue of federal diversity jurisdiction, as well as Dr. Lopez' claim of insufficiency of service process. An evidentiary hearing was set for October 29, 2015, to address Dr. Lopez' procedural issue only. The EMTALA evidentiary hearings were set for December 7, 8, and 9, 2015, to determine whether the Court has federal jurisdiction. *See* Docket No. 44.

In view of the foregoing, the Court hereby denies **without prejudice** the *Motion to Dismiss Complaint under FRCP 12(b)(6)*, filed by APS, Docket No. 10 and the *Motion to Dismiss under FRCP 12(b)(2) and (5)*, filed by Dr. Lopez, Docket No. 5, at this stage of the proceedings, subject to the completion of the pending discovery. The parties may renew their motions to dismiss prior to the scheduled hearings, if necessary. The motions to dismiss shall be filed and fully briefed ten (10) days prior to the hearings, if the parties understand that the evidence is not conclusive. The burden of proof relating to the jurisdiction of the Court rests on the shoulders of the party seeking federal jurisdiction. The parties are presumed to have knowledge that EMTALA is not a broad new cause of medical malpractice. The Court may authorize economic sanctions under federal Rule 11.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 18th day of September, 2015.

s/Daniel R. Domínguez  
DANIEL R. DOMINGUEZ  
United States District Judge